658.305
A3M
1980

Montana State Library
3 0864 1006 8187 6

MONTANA PERSONNEL PERSPECTIVES

Volume 1 - Number 1 October, 1980

NEW AFFIRMATIVE ACTION GUIDELINES TO BE ISSUED

The new Montana Affirmative Action Guidelines are undergoing final revision and should be distributed to all agencies in loose leaf form in October. The guidelines provide for identification of specific problems in recruitment, selection, upward mobility and on-the-job treatment and suggested solutions to the problems through the use of specific action measures and numerical goals where necessary. Agencies have already been provided with copies of the "total utilization analysis" which is the first step in identifying EEO problems within an agency. Other analyses will be provided in the future to help pinpoint problems and identify workable solutions. Members of the EEO section are available to assist agencies in interpreting these analyses and writing their affirmative action plans. Mini-workshops on formating the plan, upward mobility and other subjects related to A.A. planning will be offered by the Employee Relations Bureau to assist in the design and implementation of the plans.

TRAINING SCHEDULED

A two-day "Effective Presentations to State Legislators" workshop has been scheduled for November 19 and 20 in Helena. The workshop, led by Bob Deaton of the University of Montana, will focus on organizing information, testifying before legislative committees and other functions and methods relating to legislative action. Other instructors will include State Representative Ann Mary Dussault and Lewis and Clark County Commissioner, John Wilkinson. Cost is $75 per participant.

MID-MANAGEMENT SERIES PROGRESSING

The Classification Bureau is proceeding with implementation of its mid-management series. The implementation process involves (1) review of files on hand in the bureau, (2) audit of a sample of positions, (3) applying the management evaluation system, and (4) making recommendations to the agency. Because most of the work is done within the Classification Bureau, agencies may not be aware of the bureau's activities until the recommendation is reported. Bureau Chief Mark Cress reports the bureau has completed action on the Civil Engineer series and currently is reviewing hospital administrators, administration - general government series; and auditors, agricultural series and revenue collection series. Next in line are the environmental/natural resource positions.

EEOC ISSUES NEW RULES

The U.S. Equal Employment Opportunity Commission is expected at the end of October to adopt new sex discrimination quidelines relating to sexual harassment. The new guidelines make unwelcome sexual advancements, requests for sexual favors, and other verbal or physical conduct illegal when submission to such conduct becomes a term of employment, the basis for an employment decision or when such conduct creates a hostile, or intimidating working environment.

The guidelines make an employer responsible for the acts of its supervisory employees, regardless of whether the conduct was authorized or expressly forbidden. The Personnel Division will study the final rules for their policy implications on the State.

NEW AFFIRMATIVE ACTION COMMITTEE ESTABLISHED

Ms. Caro Gerber has been named as Chair of a new Affirmative Action Committee within the Classification Bureau. The four-member committee has been formed to work with agencies on classification problems resulting from Affirmative Action measures. Agencies may contact Ms. Gerber for assistance at 449-3871.

NEW MERIT SYSTEM RULES ADOPTED

A revised Merit System grievance system and changes in promotional certifications are among the changes to be made as a result of amendments to the Merit Council Rules adopted September 25, 1980. The amendments, effective October 17, 1980, also adopt race and sex conscious certification procedures, extend intermittent and temporary appointments up to 9 months, make changes in retesting requirements and examination review and other changes. Persons interested in additional information regarding the changes should contact Bureau Chief Jim Silberberger at 449-2064.

SPECIFICATION REVIEWS IN PROGRESS

The following series of class specifications are now under review by the Classification Bureau. If you desire input into the specifications contact John McEwen. The classes are: Food Service Workers (including cooks, kitchen bakery helpers, etc.); Compliance Officer series; Computer Operators - I/O Controllers.

Montana Personnel Perspectives is published by the Department of Administration, Personnel Division monthly. It is intended to keep personnel officers and agency managers informed of developments in the area of Personnel Management. Material may be reproduced by state agencies without permission. Comments should be directed to the Personnel Division, Mitchell Building, Helena (449-3871).

657.305
A3m
v.1 #2
Nov. 1980

MONTANA PERSONNEL PERSPECTIVES

Volume 1 - Number 2 November, 1980

SOME EMPLOYEE DATA RULED PUBLIC INFORMATION BY ATTORNEY GENERAL

A state employee's title, dates and duration of employment and salary are public information, according to an October ruling (v.38 No. 109) by Attorney General Mike Greely, who further ruled that while state agencies may require that requests for such information be in writing, they may not require any justification for the request.

The decision addresses the need to balance two constitutional guarantees: the public's right to know versus the individual's right to privacy.

Greely ruled, "In this case, the slight demand of individual privacy does not outweigh the great merit of allowing the public to know who its employees are, what their jobs are, and how much they are being paid. Disclosing such information increases public confidence in its government and consequently increases government's ability to serve the public."

The opinion was requested by the Personnel Division on behalf of the Personnel Policy Network, when a proposed revision to the state's Employee Record Keeping policy revealed that state agencies did not use a consistent method when releasing this information.

In an earlier opinion, Greely established a balancing test to be applied to the two rights when conflict arises. (See 37 OP. ATT'Y GEN. NO. 107 at 2 (1978.)

The steps of the balancing test are:

1) determining whether a matter of individual privacy is involved;
2) determining the demands of that privacy and the merits of publicly discussing the information at issue, and
3) deciding whether the demand of privacy clearly outweighs the demand of public disclosure. (Greely's emphasis.)

Applying this balancing test to the specific questions raised in the request for an opinion, Greely ruled that in the case of an employee's job title, "no matter of individual privacy is even arguably involved."

He found the question of dates and duration of employment and salary only slightly more difficult, but reached the same conclusion - "no privacy right is infringed by the disclosure of a state employee's dates and duration of employment and salary."

With regard to the form the request should take, Greely ruled that "it is not necessary that requests and responses be in writing," since there is no specific

[redacted]

constitutional prohibition against such a procedure. But Greely continued, an agency "after considering such factors as its own efficiency and the likelihood of individual complaints about disclosure, may, in its discretion, require that requests be in writing."

An agency may not require justification for requests for the information. "Our constitution, guaranteeing the public's right to know, is alone sufficient justification. The constitutional provision is concerned with the necessity of an open government and public's ability to observe how its government operates regardless of each person's subjective motivation." (37 OP. ATT'Y GEN. NO. 107 at 4 (1978).) (Greely's emphasis.)

RULES ADOPTED

Annual vacation and sick leave rules, based on policies 3-0305 and 3-3010, were adopted formally by the Department of Administration without change on November 5, 1980. Notice of the rule adoption appears in the November 14, 1980, issue of the Montana Administrative Register.

SALARY SURVEY NEARS COMPLETION

The key classes in the 1980 salary survey were selected to represent occupational groups as well as grade levels, according to research specialist Joe Michaud, who said results of the survey should be published before the end of the year. The results will be reported by key class, by occupation and by grade level. Michaud said if time permits, the 1980 survey report will be expanded to include data on some classes obtained from the U.S. Civil Service Commission State Salary Survey. For further information, contact Michaud at 449-3871.

CLASSIFICATION REVIEWS POSITIONS

Implementation of the mid-management series by the Classification Bureau is continuing with reviews soon to begin on management positions in the following areas: planner, research and analysis and social/human services.

A class review of payroll and related positions also is scheduled. Contact John McEwen at 449-3871 for details on these projects.

LAWYER EVALUATION PLAN READIED

The new lawyer evaluation plan developed by the Classification Bureau is in the final development stage, according to Bureau Chief Mark Cress, who can be contacted for details at 449-3871. The bureau will generate PDF's to allocate all attorney positions into the following six classes. The chief legal counsel I and II will be deleted.

110001	Lawyer I
110002	Lawyer II
110003	Lawyer III
110008	Lawyer IV
110009	Lawyer V
110010	Lawyer VI

Montana Personnel Perspectives is published by the Department of Administration, Personnel Division monthly. It is intended to keep personnel officers and agency managers informed of developments in the area of personnel management. Material may be reproduced by state agencies without permission. Comments should be directed to the Personnel Division, Mitchell Building, Helena (449-3871).

S
658.305
M3m
v.1 no.3
Dec. 1980

PLEASE RETURN

MONTANA PERSONNEL PERSPECTIVES

Volume 1 - Number 3 December, 1980

NEW BUREAU CHIEFS APPOINTED

Mark Cress is the new Employee Relations Bureau Chief and John McEwen has moved into Cress's former slot as Classification Bureau Chief in the Personnel Division. The appointments were announced effective November 10 by Division Administrator Trish Moore.

Cress replaces Pat Estenson who now heads the Veteran's Home in Columbia Falls.

Commenting on his plans for his new post, Cress said, "The Employee Relations Bureau is planning to pull together resources for technical development and assistance in personnel systems. This will allow for development of more uniform personnel systems, while continuing the trend toward greater participation by agency personnel officers. In addition, greater emphasis will be placed on developing personnel and management curriculum through the training section."

McEwen said of his plans, "My goal is to continue the progress that we've made in making the classification system as viable and useful to management as possible. We will encourage management participation in the classification process. In the near future we will be making presentations to management and supervisory personnel regarding how to better understand the classification process and how to use it as a management tool. We will continue our existing projects, such as the mid-management review."

FORMATTING WORKSHOP SCHEDULED

A mini-workshop on formatting an agency affirmative action plan is scheduled at 9 a.m. Monday, December 15, 1980, in the Personnel Division conference room in the Mitchell Building. Topics to be covered at the workshop include writing action items and the agency EEO policy statement. Reservations are requested by December 10 by calling Vicki Liedle or Gale Kuglin at 3871.

STATE DOCUMENTS COLLECTION

DEC 10 1980

MONTANA STATE LIBRARY
930 E Lyndale Ave.
Helena, Montana 59601

CLASSIFICATION APPEAL RULE PROPOSED TO BPA

A classification appeal rule which would require an employee to identify his specific complaint at the first step of the four-step appeals process and to resolve the complaint at the lowest level possible was proposed to the Board of Personnel Appeals at its November meeting by the Personnel Division Classification Bureau and the Montana Public Employees' Association.

The rule was offered as an alternative to a rule proposed by the board which would have required full disclosure of the cause for a complaint at the fourth and final step of the appeals process, when it reaches the board. (See 1980 Montana Administrative Register, issue number 16, pages 2478-2480).

In testimony at a public hearing before the board, both Employee Relations Bureau Chief Mark Cress and MPEA spokesman Jim Adams agreed that the earliest possible identification of the issue being appealed would streamline the entire appeals process by encouraging early resolution of complaints and focusing the scope of an appeal by clearly defining the issues to be discussed.

Cress testified that the classification appeals procedure often winds up dealing with complaints that really are not classification issues, but just reflect general employee dissatisfaction. But often this is not discovered until the complaint reaches the fourth stage of the process, which is a hearing before a board examiner.

The proposed rule sets out 12 broad appealable issues, such as "The class specification doesn't adequately describe my position duties"; "A different class specification is a better description of my position duties"; and "The class title is inappropriate for my position.

The employee would select one or a combination of these issues as the basis for complaint.

Cress recommended that no appeal or grievance should be allowed which does not have a real basis for complaint which the employee can identify clearly at the beginning of the process. He also recommended that employees be forced to stick to the complaint they initially identify and not be allowed to bring in additional issues at a later step.

MPEA representative, Adams, agreed with all but one of Cress's points, noting both management and the union have been "battling the same problems in different arenas for the past five years."

Adams asked the board to consider the alternative proposal which he said would help bring "order out of chaos before step four," (board involvement). He said a clear statement of the problems would make it easier for the board's hearing examiners to address the issues. He also said that waiting until the final step in the process to require clear identification of the issues could place in unfair burden on employees and their representatives when preparing a case for presentation to the board.

Cress and Adams disagreed on only one point in the alternative proposal - whether or not the hearings examiners and the board should substitute their judgment for the classification bureau's in making the actual reassignment of classification. Cress recommended that the examiners and the board review cases on procedural grounds, but allow the bureau to make the actual reclassification. Adams urged the board to retain the discretion to reclassify, if they believe it is necessary.

The board did not take any action on the alternative proposal or the rule it proposed at the hearing.

For details on the alternative proposal, contact Doug Denler or Mark Cress at the Personnel Division, phone 449-3871.

DEFERRED COMPENSATION CHANGES ANNOUNCED

Starting January 1, 1981, participants in deferred compensation will be earning more on the money invested in the plan's fixed annuity option. The new rate for money invested after January 1, 1981, will be 10.4 percent. Monies invested prior to that date will earn 8.25 percent.

Nationwide Life Insurance Company, which invests the deferred compensation money for the state, agreed to the new money/old money approach at the November meeting of the State Employees Advisory Council on Deferred Compensation. The advisory council believes the new money/old money approach is preferable to the traditional portfolio method for computing interest rates during times of high inflation.

Employees who join or continue with the deferred compensation program after January 1 may select the fixed annuity option, which will pay a guaranteed 10.4 percent interest rate for 1981. The advisory council also agreed to offer employees a variable annuity plan. This plan has eight options, which include money market funds, bond funds and several mutual stock funds. There is no guaranteed rate of return on the variable annuity plan. Employees who select the variable annuity should realize that they assume some risk for the investment performance of their variable annuity option. While it is possible to earn a higher return on the variable annuity, market conditions can change and the return can be lower. Employees who select this option should be careful to understand its unique features.

A $3 annual administrative fee will be charged for the old money invested before January 1, 1981, and a $12 administrative fee will be charged on the new money invested after that date. For employees continuing in the plan, this represents a $15 a year total charge. This compares with a $12 charge for last year.

Montana Benefits, Inc., has been contracted by the state to market the plan and to provide administrative services. A new enrollment effort designed to explain the program to all employees is planned for January.

Deferred compensation is offered as a benefit to help employees increase their financial independence during retirement years. Employees can set aside a portion of their income and have it invested at compound interest rates and not pay state or federal income taxes on the money or its earnings until it is received. By deferring a portion of an employee's salary under the plan, the amount withheld from the paycheck for income taxes will be reduced. Upon termination from the state, the money may be withdrawn under a variety of options. In the event of death the value of the account will be paid to the named beneficiaries. The money will be subject to income tax in the year issued.

An employee may not withdraw money while employed by the state. Deferred compensation is not a savings account that can be used as needed. In the event of extreme financial hardship employees can apply for early withdrawal, but this is a special circumstance and it is not easy to qualify for early pay out.

The members of the group benefits advisory council are Dick Franz, Office of Budget and Program Planning; John LaFaver, Fiscal Analyst; Dave Evenson, Administration; John Prebil, Highways; John Mathews, Justice; Jack Noble, University System; Tom Schneider, MPEA, and Nadine Jensen, AFSCME. Employees may contact any of these members about concerns with the program.

Questions about investment options or administrative problems should be directed to Montana Benefits at 443-6398, or the the Employee Benefits Bureau, 449-3871. Additional printed information on deferred compensation will be available for employees in a few weeks.

GUIDELINES ADOPTED

Sexual harassment guidelines have been adopted in final form by the Equal Employment Opportunity Commission. The guidelines make "harassment on the basis of sex. . . a violation of Section 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

The guidelines establish employer liability in regard to the conduct of both employees and non-employees relating to sexual harassment.

The Interdepartmental Coordinating Committee for Women will be interviewing employees during December on the subject of sexual harassment to gather data for an information/education program.

The full text of the guidelines follows. The summary of comments made to EEOC is found at the November 10, 1980, issue of the Federal Register, pages 74676-74677.

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

§ 1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.[1] Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

[1] The principles involved here continue to apply to race, color, religion or national origin.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

CLASSIFICATION WORKSHOP PLANNED

A two-hour workshop for managers which will explain what the statewide classification plan is, how it works and the manager's role in the process will be presented December 16, 17, and 18 by the Personnel Division Classification Bureau.

Interested Department directors, personnel officers, division administrators, bureau chiefs and supervisors should plan to attend only one session. No advance registration is required.

On December 16 and 17 there will be sessions from 9:30 a.m. to noon and a second session from 1:30 to 3:30 p.m. in the SRS Auditorium. On December 18, there will be a session from 1:30 to 3:30 p.m. in the auditorium of the new Highway Building.

For further information about the training sessions, contact George Harris at 449-3871.

NEW APPLICATION READIED

A new state employment application is in the design stage and should be distributed to Personnel Policy Network members for review in December. The application is being revised in conjunction with the development of the new affirmative action guidelines. The EEO/Policy Development Section of the Personnel Division has almost completed the first round of meetings on new affirmative action plans with all agencies.

Montana Personnel Perspectives is published by the Department of Administration, Personnel Division monthly. It is intended to keep personnel officers and agency managers informed of developments in the area of personnel management. Material may be reproduced by state agencies without permission. Comments should be directed to the Personnel Division, Mitchell Building, Helena, Montana, (449-3871).

250 copies of this publication were produced at a unit cost of $.134 per copy, for a total cost of $33.68 which includes $31.43 for printing and $2.25 for distribution.